



# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

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DEVAL L. PATRICK  
GOVERNOR

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LIEUTENANT GOVERNOR

January 22, 2008

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislation, entitled "An Act Improving Tax Fairness and Business Competitiveness."

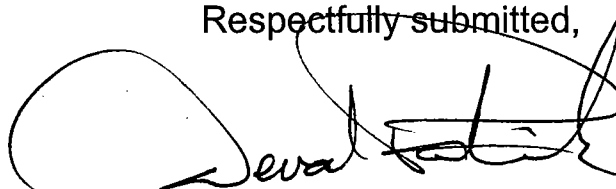
This legislation will close unintended corporate tax loopholes that primarily benefit larger multistate businesses. The two principal reforms are combined reporting, which requires affiliated corporations engaged in unitary business activities to combine their incomes and file as one entity, and "check-the box" conformity, which requires businesses to show the same corporate status on their Massachusetts returns as on their federal and other-state forms. This bill also prevents Internet retail agents from avoiding the hotel/motel tax on the full price of a room as charged to the consumer, and clarifies that the earned income tax credit is available only to Massachusetts residents.

This proposal will substantially reduce the business tax rate. Over the next several years, it will lower the main corporate rate from 9.5 to 8.3 percent, a 13 percent reduction that will especially benefit thousands of smaller and locally-based businesses.

Accordingly, this legislation promotes the important public policies of tax equity, modernization, competitiveness and revenue adequacy. And it implements the report of the Study Commission on Corporate Taxation, appointed by legislative leaders and my Administration.

I urge your prompt and favorable consideration of this bill to improve the fairness of our business taxes and to improve the competitiveness of Massachusetts businesses.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick", is written over the text "Respectfully submitted,". The signature is stylized with a large, sweeping initial "D" and a prominent "P".



# The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND **EIGHT**

## AN ACT

### IMPROVING TAX FAIRNESS AND BUSINESS COMPETITIVENESS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Clause Sixteenth of section 5 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition,, is hereby further amended by striking out paragraph (2) and inserting in place thereof the following paragraph:-

(2) In the case of a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation, all property owned by the corporation other than the following:-- real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be considered to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

SECTION 2. Said section 5 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 247 to 251, the words "(a) a domestic manufacturing corporation as defined in section thirty-eight C of chapter sixty-three or (b) a foreign manufacturing

corporation as defined in section forty-two B of said chapter" and inserting in place thereof the following words:- a manufacturing corporation as defined in section 42B of chapter 63.

SECTION 3. Clause Sixteenth of said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out paragraph (5) and inserting in place thereof the following paragraph:-

(5) The classification by the commissioner or the appellate tax board of a corporation as a business corporation or a manufacturing corporation as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.

SECTION 4. Clause Sixteenth A of said section 5 of said chapter 59 is hereby repealed.

SECTION 5. Section 18 of said chapter 59, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 18 to 19, the words "domestic business and foreign corporations as defined in section thirty of chapter sixty-three" and inserting in place thereof the following words:- business corporations subject to tax under section 39 of chapter 63.

SECTION 6. Said section 18 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 38 to 39, the words "domestic business or foreign corporation, as defined in section thirty of chapter sixty-three" and inserting in place thereof, the following words:- business corporation subject to tax under section 39 of chapter 63.

SECTION 7. Section 33 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 6 to 10, the words "domestic business corporations and foreign corporations as respectively defined in section thirty of chapter sixty-three, and domestic manufacturing corporations and foreign manufacturing corporations as respectively defined in sections thirty-eight C and forty-two B of said chapter" and inserting in place thereof the following words:- business corporations subject to tax under section 39 of chapter 63.

SECTION 8. Section 83 of said chapter 59, as so appearing, is hereby amended by striking out, in line 2, the words "domestic and foreign".

SECTION 9. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding the following 3 paragraphs:-

(p) "Partnership", an entity that is classified for the taxable year as a partnership for federal income tax purposes, except as otherwise provided in this chapter.

(q) "Disregarded entity", an entity that is disregarded as a separate entity from its owner for federal income tax purposes. Such an entity shall similarly be disregarded for purposes of this chapter, and without limitation, all income, assets, and activities of the entity shall be considered to be those of the owner.

(r) "Tax-free earnings and profits", earnings and profits that were considered tax-free earnings and profits under section 8 as in effect on December 31, 2008.

SECTION 10. Paragraph (1) of subsection (a) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out subparagraph (E).

SECTION 11. Paragraph (2) of said subsection (a) of said section 2 of said chapter 62 is hereby amended by striking out subparagraph (B), as so appearing.

SECTION 12. Said paragraph (2) of said subsection (a) of said section 2 of said chapter 62 is hereby further amended by striking out subparagraph (D), as so appearing, and inserting in place thereof the following subparagraph:-

(D) Dividends received from a corporate trust subject to taxation under section 8 as in effect on December 31, 2008, to the extent that they are derived from earnings and profits previously taxed to the trust under said section 8 but only to the extent that the trust properly filed returns and paid all taxes due.

SECTION 13. Paragraph (1) of subsection (d) of said section 2 of said chapter 62, as so appearing, is hereby amended by striking out subparagraph (J).

SECTION 14. Section 4 of said chapter 62, as so appearing, is hereby amended by striking out, in lines 1 to 4, the words "nonresidents shall be taxed, to the extent specified in section five A on their taxable income, and corporate trusts shall be taxed to the extent specified in

section eight” and inserting in place thereof the following words:- and nonresidents shall be taxed to the extent specified in section 5A.

SECTION 15. Subsection (a) of section 6 of said chapter 62, as so appearing, is hereby amended by adding the following paragraph:-

In the case of dividends received out of tax-free earnings and profits of a corporate trust previously subject to tax under this chapter, shareholders of the corporate trust shall be entitled to credit for income taxes paid to other jurisdictions on those earnings and profits, either by the corporate trust or by the shareholders, as otherwise calculated under this subsection.

SECTION 16. Subsection (h) of said section 6 of said chapter 62, as so appearing, is hereby amended by inserting, after the second sentence, the following sentence:- With respect to a person who is a nonresident for all or part of the taxable year, the credit shall be limited to 15 per cent of the federal credit multiplied by a fraction the numerator of which is the earned income of the nonresident from Massachusetts sources and the denominator of which is the earned income of the nonresident from all sources.

SECTION 17. Section 8 of said chapter 62 is hereby repealed.

SECTION 18. The first paragraph of section 17 of said chapter 62, as appearing in the 2006 Official Edition, is hereby amended by striking out the third and fourth sentences.

SECTION 19. Section 17A of said chapter 62, as so appearing, is hereby amended by striking out subsection (e).

SECTION 20. Section 19 of said chapter 62 is hereby repealed.

SECTION 21. Section 6 of chapter 62C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 8 to 11, the words "every corporate trust taxable under section eight of chapter sixty-two, and every other corporate trust doing business within the commonwealth and every other" and inserting in place thereof the following words:- and every.

SECTION 22. Said section 6 of said chapter 62C, as so appearing, is hereby further amended by striking out, in line 32, the word "domestic" and inserting in place thereof the following word:- business.

SECTION 23. Section 7 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 1 to 2, the words ", other than a corporate trust as defined in chapter sixty-two,".

SECTION 24. Said chapter 62C is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:-

Section 11. Except as otherwise provided in this chapter, every business corporation, as defined in section 30 of chapter 63, shall, on or before the fifteenth day of the third month following the close of each taxable year, make a return giving the information that the commissioner may consider necessary for the determination of the taxes imposed upon it by chapter 63.

SECTION 25. Section 16 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "operator", in line 53, as so appearing, the following words: -- or room reseller.

SECTION 26. Section 25 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "operator", in line 6, the following words: -- or room reseller.

SECTION 27. Section 51 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words "domestic or foreign business corporation" and by inserting in place thereof the following words:- business corporation as defined in section 30 of chapter 63.

SECTION 28. Section 67 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "operator", in line 2, the following words: -- or room reseller .

SECTION 29. The definition of "Financial institution" in section 1 of chapter 63 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The term "corporation" as used in this definition shall mean any corporation, or any "other entity" as defined in section 1.40 of chapter 156D, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the commonwealth or any other jurisdiction, that is classified for the taxable year as a corporation for federal income tax purposes.

SECTION 30. Section 2 of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "subsection (b)" and inserting in place thereof, the following words:- subsections (b) and (d).

SECTION 31. Said section 2 of said chapter 63, as so appearing, is hereby further amended by adding the following subsection:-

(d) Any financial institution that is an S corporation, as defined in section 1361 of the Code, shall not be subject to the tax provided in subsections (a) and (b), and shall instead be subject to the excise set forth in section 2B.

SECTION 32. Said chapter 63 is hereby further amended by inserting after section 2A the following section:-

Section 2B. (a) Any financial institution which is an S corporation, as defined under section 1361 of the Code, shall pay, on account of each taxable year, an excise measured by its net income determined to be taxable under section 2A as follows:

(1) The net income shall be determined by taking into account subchapter S of the Code. Income or loss shall be determined as if it were realized or incurred directly by an owner subject to taxation under chapter 62 or 63, as applicable. In the case of an S corporation, income shall be included in the net income measure under this subsection and subject to tax at a rate of 10.5 per cent to the extent that the income is taxed to the S corporation for federal income tax purposes; and

(2) Any financial institution which is an S corporation and has total receipts for the taxable year of \$6,000,000 or more shall also include in its excise an amount determined by multiplying its net income determined to be taxable in accordance with this chapter by 1 of the following rates:

(i) if total receipts for the taxable year are at least \$6,000,000 but less than \$9,000,000, 3.31 per cent; and

(ii) if total receipts for the taxable year are \$9,000,000 or more, 4.97 per cent.

For purposes of this paragraph (2), net income determined to be taxable in accordance with this chapter shall be determined without taking into account subchapter S of the Code, and shall not include income that is taxed to the S corporation at the entity level under paragraph (1). The term "total receipts" shall mean gross receipts or sales, less returns and allowances, and shall include dividends, interest, royalties, capital gain net income, rental income and all other income. The cost of goods sold or the cost of operations shall not be deductible in determining these total receipts. The commissioner shall, by regulation, apply limits on an aggregate basis to S corporations engaged in a unitary business with majority direct or indirect ownership by common stockholders. This aggregating shall also include any other type of entity so engaged and so owned which the commissioner finds was established for the purpose of avoiding the foregoing limit.

(3) Qualified subchapter S subsidiaries shall not be subject to separate entity level taxation under this section. Rather, the parent S corporation shall be subject to tax under this section, and shall include the income and take into account the activities of all qualified subchapter S subsidiaries for purposes of calculating the excise due under paragraphs (1) and (2). The parent S corporation and its qualified subchapter S subsidiaries shall be jointly and severally liable for the tax due under this chapter.

(b) The excise imposed under this section for each taxable year shall be not less than \$456.

SECTION 33. Section 30 of said chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out the introductory clause and paragraphs 1 and 2 and inserting in place thereof the following introductory clause and 2 paragraphs:-

When used in this section and in sections 31 to 52, inclusive, the following terms shall have the following meanings, and the terms "business corporation," "disregarded entity," and "partnership", defined in paragraphs 1, 2 and 16 of this section, shall, unless otherwise provided, also have the following meanings and effect for purposes of all sections of this chapter:

1. "Business corporation", any corporation, or any "other entity" as defined in section 1.40 of chapter 156D, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the commonwealth or any other jurisdiction, and whether organized for business or for non-profit purposes, that is classified for the taxable year as a corporation for federal income tax purposes.

2. "Disregarded entity", an entity that is disregarded as a separate entity from its owner for federal income tax purposes. Such an entity shall similarly be disregarded for purposes of this chapter, and without limitation, all income, assets, and activities of the entity shall be considered to be those of the owner.

SECTION 34. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 178, the word "foreign" and inserting in place thereof the following word:- business.

SECTION 35. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 184 the words "thirty-two or".

SECTION 36. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 192 the words "thirty-two or".

SECTION 37. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 196 to 198 the words, "domestic business corporation taxable under clause (1) of subsection (a) of section 32 or of a foreign corporation taxable

under clause (1) of subsection (a) of" and inserting in place thereof, the following words:-  
business corporation taxable under.

SECTION 38. Said section 30 of said chapter 63 of the General Laws, as so appearing, is hereby further amended by striking out paragraph 16 and inserting in place thereof the following 2 paragraphs:-

16. "Partnership", any entity that is classified as a partnership for federal income tax purposes for the taxable year.

17. Except as otherwise provided in this chapter, the term "Code" shall mean the Internal Revenue Code of the United States, as amended and in effect for the taxable year.

SECTION 39. Subsection (h) of section 31A of said chapter 63, as so appearing, is hereby amended by striking out the second sentence.

SECTION 40. Section 31E of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "domestic or foreign" and inserting in place thereof the following word:- business.

SECTION 41. Said chapter 63 is hereby further amended by inserting after section 31L the following section:-

Section 31M. In determining gross income under this chapter, if the federal gross income includes any item of gain or has been reduced by any item of loss, with respect to property, then the federal gross income shall be increased by the excess of the federal adjusted basis of the property over the Massachusetts adjusted basis of the property, and shall be decreased by the excess of the Massachusetts adjusted basis of the property over the federal adjusted basis of the property, so that the gain or loss realized for Massachusetts purposes takes into account all applicable differences in the Massachusetts and federal tax rules over the life of an asset that should, in principle, give rise to differences in basis. The Massachusetts adjusted basis of property shall be the federal adjusted basis, except that (i) any federal adjustment resulting from provisions of the Code that were not applicable in

determining Massachusetts gross income at the time the federal adjustments were made shall be disregarded; and (ii) adjustments shall be made for any item that was applicable in determining Massachusetts gross income but that was not so applicable in determining federal gross income and for which a federal adjustment would be allowed under the Code if the item had been applicable in determining federal gross income. Without limitation of the foregoing, the federal basis of shares in a business corporation that was formerly treated as a corporate trust or of shares in a successor of that entity shall be reduced in computing Massachusetts adjusted basis to take into account any tax-free earnings and profits accumulated by the former corporate trust.

SECTION 42. Section 32 of said chapter 63 is hereby repealed.

SECTION 43. Said chapter 63 is hereby further amended by striking out section 32B, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 32B. (a) *General rule.* Notwithstanding any other provision of this chapter, a corporation subject to tax under this chapter and engaged in a unitary business with 1 or more corporations subject to combination within the meaning of this section shall, under regulations adopted by the commissioner, calculate its taxable net income derived from this unitary business as its share, attributable to the commonwealth, of the apportionable income or loss of the combined group engaged in the unitary business, determined in accordance with a combined report.

(b) *Unitary business defined.*

- (1) For purposes of this section, the term “unitary business” shall mean the activities of a group of 2 or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as

to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the fullest extent permitted under the United States Constitution.

(2) For purposes of this section, the term “common ownership” shall mean that more than 50 per cent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. A group of corporations under common ownership may be engaged in 1 or more unitary businesses.

(3) Any business conducted by a partnership shall be treated as the business of the partners, whether the partnership interest is directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the magnitude of the partner's ownership interest or its distributive share of partnership income. A business conducted directly or indirectly by 1 corporation is unitary with that portion of a business conducted by another, commonly owned corporation through its direct or indirect interest in a partnership if the activities conducted by the former corporation and the partnership are unitary within the meaning of paragraph (1) regardless of the magnitude of the partner's ownership interest or its distributive or any other share of partnership income.

(c) *Membership in the combined group.*

- (1) Corporations that are subject to combination within the meaning of this section shall include, without limitation, an entity of the kind that is subject to tax or would be subject to tax if doing business in the state under section 2, 2B, 32D, 39 or 52A, as well as an entity described under sections 20 to 29E, inclusive, in any case in which the entity does not qualify for treatment as a life insurance company as defined in section 816 of the Code or an insurance company subject to tax imposed by section 831 of the Code. A corporation is subject to combination irrespective of whether the corporation is actually subject to tax under section 2, 2B, 32D, 39 or 52A. A corporation subject to combination includes a real estate investment trust as referenced under sections 856 to 859, inclusive, of the Code and a regulated investment company as referenced under sections 851 to 855, inclusive, of the Code.
- (2) A corporation subject to combination within the meaning of this section shall not include an entity described under section 38B or 38U. In addition, an entity subject to combination within the meaning of this section shall not include an entity described under sections 20 to 29E, inclusive, except as provided in paragraph (1) or otherwise in this chapter.
- (3) The members of a combined group subject to tax under this chapter may elect to determine their apportioned share of the taxable net income or loss of the combined group pursuant to a water's edge election under which each taxpayer member shall take into account the income and apportionment factors of only the members otherwise includible in the combined group that are described in any one or more of the following categories: (A) any member incorporated in the

United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States; (B) any member, regardless of the place incorporated or formed, if the average of its property, payroll, and sales factors within the United States is 20 per cent or more; (C) any member that earns more than 20 per cent of its income, directly or indirectly, from intangible property or service-related activities the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the business income of other members of the group, but only to the extent of that income and the apportionment factors related thereto. A water's edge election shall be effective only if made on a timely-filed, original return for a taxable year by the members of the combined group subject to tax under this chapter. A water's edge election shall be binding for and applicable to the taxable year for which it is made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by the commissioner.

- (4) Notwithstanding any other provision of this section or this chapter, the commissioner may require that a combined report include the income and associated apportionment factors of any person, corporate or non-corporate, when that person is engaged in a unitary business with the combined group of which the taxpayer is a member and such inclusion is necessary to prevent the avoidance or evasion of taxes owed to the commonwealth, but in the case of an entity described in sections 20 to 29E, inclusive, the commissioner may exclude the entity's apportionment factors as referenced in paragraph (2) of subsection (d) . Further, the commissioner may, by regulation, require that a combined report include the

income and associated apportionment factors of any person, corporate or non-corporate, when that person is engaged in a unitary business with the combined group of which the taxpayer is a member and the combined report is necessary to reflect a proper apportionment of income of the unitary business.

(d) *Determination of taxpayer's share of apportionable income of a combined group.*

(1) A taxpayer's share, attributable to the commonwealth, of the apportionable income of a combined group of which it is a member shall be determined by applying the apportionment provisions of this chapter that are applicable to the taxpayer to the apportionable income of the combined group, taking into account the apportionment factors associated with the combined group's unitary business, as adjusted pursuant to regulations adopted by the commissioner to account for differences, if any, in the apportionment formulae applicable under this chapter to the taxpayer members of the combined group.

(2) The apportionment percentage of each member of a combined group subject to tax under this chapter shall be adjusted to include in its apportionment factor numerator a share of the apportionment factors attributable to this state of members of the group that are not themselves taxable in the commonwealth, and by including in its apportionment factor denominator the apportionment factors associated with the combined group's unitary business wherever located.

Notwithstanding this provision, a taxpayer's apportionment factor numerator shall exclude the factors of any entity described under sections 20 to 29E, inclusive. A taxpayer's share of apportionment factors attributable to this state of members of the group that are not themselves taxable in the commonwealth shall be

determined based on its pro rata share of the apportionment factor numerators of the group members subject to tax in the commonwealth, as adjusted pursuant to regulations adopted by the commissioner to account for differences, if any, in the statutory computation of the taxpayer members' apportionment formulae applicable under this chapter to the taxpayer members of the combined group. For purposes of determining whether sales of tangible personal property are "in the commonwealth" within the meaning of subsection (f) of section 38, a taxpayer is considered taxable in any state in which any member of its combined group is subject to tax. With respect to a member of a combined group that has no apportionment factors or whose apportionment factors are not determined under section 38, the commissioner may adopt rules to properly reflect the taxpayer's income subject to apportionment and to effect a proper apportionment of the taxpayer's income.

- (3) For purposes of this section, "apportionable income" is the unitary business income of the combined group and shall be broadly construed to the fullest extent permitted by the United States Constitution. The income subject to apportionment is the sum of the apportionable net income of each member of the combined group as determined under this chapter and as adjusted pursuant to regulations issued pursuant to subsection (f), whether or not the member is subject to tax hereunder.

(e) *Liability.* Every member of the combined group shall be jointly and severally liable for the tax due from any taxpayer member under this chapter, including any interest and penalties, to the extent permitted under the United States Constitution.

(f) *Other issues.* The commissioner shall adopt regulations to implement this section and to coordinate the application of this section with the other provisions of this chapter. The regulations shall include rules to address, without limitation, the following:

- (1) the water's edge election under paragraph (3) of subsection (c);
- (2) the determination of the apportionable income of a combined group and of a taxpayer member of the combined group under subsection (d);
- (3) the elimination of intercompany transactions, including but not limited to the payments of dividends, between or among combined group members, and the elimination or deferral of income, expenses, apportionment factors or other tax items associated with those transactions;
- (4) the sharing within the combined group of credits that may be validly claimed by a taxpayer and that are attributable to the combined group's unitary business, to the extent such sharing of credits by a particular member of the combined group is consistent with the statutory requirement for claiming such a credit, taking into account the nature of such member's business, activities, etc.;
- (5) the application of any carry forwards, including the sharing of any net operating loss or tax credit carry forwards that are attributable to the activities of the combined group's unitary business, but the carry forward of losses, credits or other tax benefits that arise before the effective date of this section shall be available only to the extent permitted by law as in effect before the effective date;
- (6) the relationship to this section of the provisions set forth in sections 31I to 31K, inclusive; and
- (7) all other matters related to the interpretation and administration of this section.

*(g) Application to expand combined group to include federal consolidated group members.*

The commissioner may adopt regulations under which a taxpayer subject to this section may apply to include within a combined group every member of its federal consolidated return group that might not otherwise be members of the taxpayer's unitary group, if all members of the expanded combined group that are subject to tax under this chapter agree to such treatment for a 10-year period and on terms further provided by the commissioner.

The commissioner may approve such expanded combined group reporting if he determines that such reporting would fairly reflect income attributable to the commonwealth.

SECTION 44. Section 32D of said chapter 63, as so appearing, is hereby amended by striking out, in lines 1 to 3, the words "domestic business corporation or foreign corporation subject to an excise under section 32 or 39 which is an S corporation or a qualified subchapter S subsidiary" and inserting in place thereof the following words:- business corporation subject to an excise under section 39 which is an S corporation..

SECTION 45. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 12 to 16, the words ". In the case of a qualified subchapter S subsidiary, income shall be included in the net income measure under this subsection to the extent that such income would have been taxed to the subchapter S subsidiary for federal income tax purposes had it been treated as a separate corporation".

SECTION 46. Subsection (a) of said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out clause (ii) and inserting in place thereof the following clause:-

(ii) Any such business corporation which is an S corporation and has total receipts for the taxable year of \$6,000,000 or more shall also include in the net income measure of the excise imposed under section 39 an amount determined by multiplying its net income

determined to be taxable in accordance with this chapter by 1 of the following rates, in lieu of the rate provided in said section 39:

(1) when the total receipts for the taxable year are at least \$6,000,000 but less than \$9,000,000:

- a. For taxable years beginning before January 1, 2010, 2.63 per cent;
- b. For taxable years beginning on or after January 1, 2010, but before January 1, 2011, 2.28 per cent;
- c. For taxable years beginning on or after January 1, 2011, but before January 1, 2012, 1.93 per cent; or
- d. For taxable years beginning on or after January 1, 2012, 1.58 per cent; and

(2) when the total receipts for the taxable year are \$9,000,000 or more:

- a. For taxable years beginning before January 1, 2010, 3.95 per cent;
- b. For taxable years beginning on or after January 1, 2010, but before January 1, 2011, 3.60 per cent;
- c. For taxable years beginning on or after January 1, 2011, but before January 1, 2012, 3.25 per cent; or
- d. For taxable years beginning on or after January 1, 2012, 2.89 per cent.

SECTION 47. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out, in line 31, the words "or qualified subchapter S subsidiary".

SECTION 48. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) Qualified subchapter S subsidiaries shall not be subject to separate entity level taxation under this section or section 39. Rather, the parent S corporation shall be subject to tax

under this section and section 39, and shall include the income and take into account the activities of all qualified subchapter S subsidiaries for purposes of determining the excise due under subsection (a) of this section, and shall include the value of the property or the net worth of all qualified subchapter S subsidiaries for purposes of determining the non-income measure of the excise under clause (1) of subsection (a) of section 39. The parent S corporation and its qualified subchapter S subsidiaries shall be jointly and severally liable for the tax due under this chapter.

SECTION 49. Section 33 of said chapter 63 is hereby repealed.

SECTION 50. Section 38 of said chapter 63, as appearing in the 2006 Official Edition, is hereby further amended by striking out, in line 2, the words “domestic business corporation or of a foreign corporation” and inserting in place thereof the following words:- business corporation.

SECTION 51. Paragraph (1) of subsection (a) of said section 38 of said chapter 63, as so appearing, is hereby amended by striking out clause (i) and inserting in place thereof the following clause:-

(i) shares in a corporate trust, as defined in section 1 of chapter 62, to the extent such dividends represent tax free earnings and profits, as defined in section 8 of chapter 62 in effect on December 31, 2008.

SECTION 52. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 70, the words “thirty-eight C or”.

SECTION 53. Said section 38 of said chapter 63, as so appearing, is hereby further amended by inserting after the word “contracts”, in line 169, the following words:- ; and (6) in the case of a sale or deemed sale of a business, the term “sales” does not include receipts from the sale of the business “good will” or similar intangible value, including, without limitation, “going concern value” and “workforce in place.”

SECTION 54. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 235, the words "domestic or foreign" and inserting in place thereof the following word:- business.

SECTION 55. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 251 to 252, in line 318 and in line 326, the words "domestic or foreign".

SECTION 56. Section 38A of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the word "domestic".

SECTION 57. Section 38B of said chapter 63, as so appearing, is hereby amended by striking out, in lines 1 to 2 and in lines 14 to 15, the words ", domestic business corporation or foreign" and inserting in place thereof, in each instance, the following words:- or business.

SECTION 58. Said section 38B of said chapter 63, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) Any corporation taxable under this section shall not be subject to the excise imposed by section 2, 2B, 32D or 39.

SECTION 59. Section 38C of said chapter 63 is hereby repealed.

SECTION 60. Section 38D of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 61. Said section 38D of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 86 to 87, the words "(1)(i) of subsection (a) of section thirty-two or clause".

SECTION 62. Section 38E of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "domestic or foreign".

SECTION 63. Section 38F of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the phrase "domestic or foreign" and inserting in place thereof, the following word:- business.

SECTION 64. Section 38G of said chapter 63, as so appearing, is hereby amended by striking out, in line 1 and in line 11, the words "domestic or foreign" and inserting in place thereof, in each instance, the following word:- business.

SECTION 65. Section 38H of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 66. Said section 38H of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 55 to 56, the words "(1)(i) of subsection (a) of section thirty-two or clause".

SECTION 67. Section 38I of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign" and inserting in place thereof, the following word:- business.

SECTION 68. Section 38J of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 69. Section 38M of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "domestic or foreign" and inserting in place thereof the following word:- business.

SECTION 70. Said section 38M of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 28 to 29, the words "subsection (b) of section thirty-two, subsection (b) of section thirty-nine," and inserting in place thereof the following words:- "subsection (b) of section 39.

SECTION 71. Said section 38M of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 44 to 45, the words "thirty-two or".

SECTION 72. Subsection (a) of section 38Q of said chapter 63, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

A business corporation which commences and diligently pursues an environmental response action on or before August 5, 2011 and which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations adopted under that chapter which includes an activity and use limitation shall, at the time the permanent solution or remedy operation status is achieved, be allowed a base credit of 25 per cent of the net response and removal costs incurred between August 1, 1998 and January 1, 2012 for any property it owns or leases for business purposes and which is located within an economically distressed area as defined in section 2 of chapter 21E, if these costs are not less than 15 per cent of the assessed value of the property before remediation, and if the site was reported to the department of environmental protection. A credit of 50 per cent of these costs shall be allowed for a corporation which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the Massachusetts Contingency Plan provided in 310 CMR 40.00 which does not include an activity and use limitation. Only a business corporation that is an eligible person as defined by section 2 of chapter 21E, and not subject to any enforcement action brought under chapter 21E, shall be allowed a credit.

SECTION 73. Said section 38Q of said chapter 63, as so amended, is hereby further amended by striking out, in line 61, the words "subsection (b) of section 32 or".

SECTION 74. Section 38S of said chapter 63, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 75. Said chapter 63 is hereby further amended by striking out section 38T, as inserted by section 28 of chapter 163 of the acts of 2005, and inserting in place thereof the following section:-

Section 38U. (a) Every business corporation which is exempt from taxation under section 501 of the Code shall be subject to tax under section 39 on its unrelated business taxable income, as defined in section 512 of the Code. The property or net worth of those corporations shall not be subject to tax under this chapter, and the minimum excise under section 39 shall not apply. If a corporation has unrelated business taxable income that is taxable both within and without the commonwealth, it may apportion its net income to the commonwealth under section 38, but its apportionment factors shall be determined by reference only to the unrelated business activity of the corporation. The credits allowed under this chapter shall be determined only with respect to the unrelated business activity of the corporation.

(b) An entity that is exempt from taxation under section 501 of the Code shall not be considered to be a business corporation for purposes of chapter 59.

SECTION 76. Said chapter 63 is hereby further amended by striking out section 39, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 39. Except as otherwise provided in this section, every business corporation, organized under the laws of the commonwealth, or exercising its charter or other means of legal authority, or qualified to do business or actually doing business in the commonwealth, or owning or using any part or all of its capital, plant or any other property in the commonwealth, shall pay, on account of each taxable year, the excise provided in subsection (a) or (b) of this section, whichever is greater, except that an insurance mutual holding company established under chapter 175 or under the equivalent law of another state shall pay, on account of each taxable year, only the excise provided in clause (2) of subsection (a) or subsection (b), whichever is greater.

Without limitation, the excise levied in this section is due and payable on any 1 or all of the following alternative incidents:

(1) The authority or qualification to carry on or do business in this state or the actual doing of business within the commonwealth. The term "doing business" as used

herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in the commonwealth, as an incident to or by virtue of the powers and privileges acquired by the nature of those organizations, as well as, the buying, selling or procuring of services or property.

(2) The exercising or continuance of a business corporation's charter or other means of legal authority within the commonwealth.

(3) The owning or using any part or all of its capital, plant or other property in the commonwealth.

It is the purpose of this section to require the payment of this excise to the commonwealth by a business corporation for the enjoyment under the protection of the laws of the commonwealth, of the powers, rights, privileges and immunities derived by reason of its existence and operation.

In the case of a business corporation whose taxable year is a period of less than 12 calendar months, the portion of the amount determined under clause (1) of subsection (a) shall be multiplied by a fraction whose numerator is the number of months included in the taxable year and whose denominator is 12.

(a) An amount equal to the sum of:--

(1) \$7 per 1000 upon the value of--

(i) its tangible property as determined to be taxable under paragraph 7 of section 30 if a tangible property corporation, or

(ii) its net worth as determined to be taxable under paragraph 9 of section 30 if an intangible property corporation; and

(2) (i) For tax years beginning before January 1, 2010, 8.33 per cent of its net income determined to be taxable in accordance with this chapter; or

(ii) For tax years beginning on or after January 1, 2010, but before January 1, 2011, 7.98 per cent of its net income determined to be taxable in accordance with this chapter; or

(iii) For tax years beginning on or after January 1, 2011, but before January 1, 2012, 7.63 per cent of its net income determined to be taxable in accordance with this chapter; or

(iv) For tax years beginning on or after January 1, 2012, 7.28 per cent of its net income determined to be taxable in accordance with this chapter.

(b) \$400.

A business corporation shall not be subject to the income measure of tax under subsection clause (2) of subsection (a) if it is engaged in the business of selling tangible personal property and taxation of that business corporation under this chapter is precluded by the Constitution or laws of the United States, or would be so precluded except for the fact that the business corporation stored tangible personal property in a licensed public storage warehouse, but no portion of any warehouse which is owned or leased by a consignor or consignee of the tangible personal property shall be considered a licensed public warehouse. A business corporation exempt from the income measure of the excise under this paragraph pursuant to federal Public Law 86-272 shall nevertheless be subject to the excise under clause (1) of subsection (a) or subsection (b), whichever is greater.

SECTION 77. Said chapter 63 is hereby further amended by striking out section 42B, as so appearing, and inserting in place thereof the following section:-

Section 42B. (a) Every business corporation subject to taxation under section 39 that has a usual place of business in the commonwealth, and is engaged in manufacturing in the commonwealth, or engaged in the commonwealth in research and development shall, for the purposes of this chapter, be considered to be a manufacturing corporation or a research and development corporation. Every manufacturing corporation shall be taxed in the same manner and shall have the same duties under this chapter and chapter 62C as other business corporations subject to taxation under section 39, except insofar as the determination of the excise under this chapter may be affected by reason of the exemption from local taxation of the machinery of a manufacturing corporation.

(b) A research and development corporation for the purposes of this section is a business corporation subject to tax under section 39 whose principal activity herein is research and development and which, during the taxable year, derives more than 2/3 of its receipts attributable to the commonwealth from the activity or incurs more than 2/3 of its expenditures attributable to the commonwealth allocable to the activity, but a corporation that qualifies as a research and development corporation only by reason of its expenditures shall not be entitled to the credit provided in section 31A of chapter 63 by virtue of its qualification as a research and development corporation. A corporation that is engaged in research and development and that conducts manufacturing activities shall exclude expenditures related to manufacturing from total expenditures for the purpose of assessing whether 2/3 of expenditures are allocable to research and development, whether or not the manufacturing activities of the corporation are substantial. Receipts from research and development shall include receipts from the provision of research and development services and from royalties or fees derived from the licensing of patents, know-how or other technology developed from research and development. For purposes of this section, research and development is experimental or laboratory activity having as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products; and does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literacy, historical or similar projects. Nothing in this section shall be construed to provide for an exemption from local taxation of the machinery of a corporation considered to be a research and development corporation which is not considered to be a manufacturing corporation.

(c) For purposes of this section and section 38, the development and sale of standardized computer software shall be considered a manufacturing activity, without regard to the manner of delivery of the software to the customer.

SECTION 78. Section 52 of said chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out the first 4 sentences and inserting in place thereof the following 2 sentences:- If any of the provisions of this chapter imposing an excise on business corporations as defined in subsection (1) of section 30 are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme judicial court of the commonwealth, the portion of those provisions that was found to be unconstitutional or inoperative shall be null and void and shall become inapplicable to those corporations. In this event, the provisions of law, whether under this chapter or chapter 62, that (a) were applicable to those business corporations immediately before the enactment of the provision found to be unconstitutional or inoperative and (b) became inoperative or inapplicable in connection with the enactment of the provision found to be unconstitutional or inoperative, shall thereupon be revived and become operative and applicable in respect to those business corporations and shall be continued in full force and effect from the first day of January preceding by 6 years the first day of January of the calendar year in which the final judgment, order or decree is entered, to the same extent as if the provision found to be unconstitutional or inoperative had not been enacted.

SECTION 79. Said section 52 of said chapter 63, as so appearing, is hereby further amended by striking out the last 3 sentences and inserting in place thereof the following 3 sentences:- Excises declared invalid by reason of the foregoing premises, which were assessed on or after the date when predecessor laws are revived, made operative or applicable or continued in force as provided in this section, shall, to the extent that those excises have been paid and are unrefunded, be credited against the taxes assessed for the same period under the laws revived and again made operative, applicable and continued in force, but if this credit exceeds the taxes due, the excess shall be refunded upon warrant of the commissioner to the state treasurer. There shall be no further or other recovery of the amounts thus credited or refunded. If any provision of this chapter other than the provisions

imposing an excise shall be declared unconstitutional or inoperative, the remaining provisions shall not be affected.

SECTION 80. Subsection (1) of section 52A of said chapter 63, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) "Utility corporation" means every business corporation that is (i) an electric company and gas company subject to chapter 164; (ii) a water company and aqueduct company subject to chapter 165; (iii) a telephone and telegraph company subject to chapter 166; (iv) a railroad and railway company subject to chapter 160; and every business corporation qualified under section 131A of said chapter 160 to acquire, own and operate terminal facilities for steam, electric or other types of railroad; (v) a street railway subject to chapter 161; (vi) an electric railroad subject to chapter 162; (vii) a trackless trolley company subject to chapter 163; (viii) a pipe line company engaged in the transportation or sale of natural gas within the commonwealth; and (ix) every foreign corporation which is not subject to the above chapters but which does an electric, gas, water, aqueduct, telephone, telegraph, railroad, railway, street railway, electric railroad, trackless trolley or bus business within the commonwealth and has, before January 1, 1952, been subject to taxation under sections 53 to 60.

SECTION 81. Said chapter 63 is hereby amended by inserting after section 68A the following section:-

Section 68C. In general, a business corporation as defined in section 30 is subject to an excise under section 39, as provided in that section, and as modified by section 32D in the case of S corporations and by section 38U in the case of entities qualifying under section 501 of the Code. Notwithstanding this general rule or any other provision of this chapter, the excise under section 39 shall not apply in the case of a business corporation that is: (1) a financial institution, as defined in section 1, that is subject to excise under section 2 or 2B;

(2) a security corporation as defined in section 38B and subject to excise under that section;;  
(3) a utility corporation as defined in section 52A and subject to excise under that section;  
(4) an insurance company subject to excise under sections 20 to 29E; (5) an urban redevelopment corporation subject to excise under section 10 of chapter 121A; (6) a corporation described in sections 10 or 18 of chapter 157; (7) a corporation described in section 1 of chapter 171; (8) a corporation or other entity that qualifies as a regulated investment company under section 851 of the federal Internal Revenue Code; or (9) a business corporation otherwise expressly exempted from the excise under this chapter by any other General Law.

SECTION 82. Section 10 of chapter 63B of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word "domestic".

SECTION 83. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after paragraph (b) thereof the following paragraph:--

(b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that may be the subject of a cooperative arrangement between an operator and a reseller, or other exploitation of the market for accommodations or resale of accommodations located in the

commonwealth by any means whatsoever, including, but not limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen, solicitors or representatives are employed by the operator or reseller, by a person affiliated with the operator or the reseller by common ownership, or by any other party. This definition is intended to extend the jurisdiction of the commonwealth over operators and resellers to the full extent authorized by the Constitution and the laws of the United States.

SECTION 84. Said section 1 of said chapter 64G, as so appearing, is hereby further amended by inserting after the word "operator", in line 49, the following words: -- or the room reseller.

SECTION 85. Said section 1 of said chapter 64G, as so appearing, is hereby further amended by adding the following paragraph:-

(k) "Room Reseller" or "Reseller", any person having any right, permission, license, or other authority from or through an operator to reserve or arrange transfer of occupancy of accommodations the transfer of which is subject to this chapter, such that the occupant pays all or a portion of the rent to the reseller, but the term shall not include a tour operator.

SECTION 86. Said chapter 64G is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section: --

Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of the total amount of rent for each occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its

equivalent. The operator or room reseller shall pay the excise to the commissioner at the time provided for filing the return required by section 16 of chapter 62C.

SECTION 87. Section 3A of said chapter 64G, as so appearing, is hereby amended by striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-

Any city or town that accepts this section may impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within the city or town by any operator or room reseller at a rate up to, but not exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy, but the city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within the city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is exempt under section 2. The operator or room reseller shall pay the local excise tax imposed under this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

SECTION 88. Said chapter 64G is hereby further amended by striking out sections 4 to 6, as so appearing, and inserting in place thereof the following 4 sections:--

Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is transferred through the use of a room reseller, the application of the excise shall be as follows: If the room reseller is required to register under section 6 to collect the excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid by the occupant to the room reseller, less the amount of rent that the

reseller has paid to the operator. Whether or not the room reseller is so registered, the operator shall collect and pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or the occupant.

Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

Section 5. The amount of the excise collected by the operator or the room reseller under this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer issued or used by the operator or the room reseller. A room reseller shall not be required to disclose to the occupant the amount of tax charged by the operator. The reseller shall represent to the occupant that the separately stated taxes charged by the reseller include taxes charged by the operator.

Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of registration has been issued to him in accordance with section 67 of chapter 62C.

SECTION 89. Section 7A of said chapter 64G, as so appearing, is hereby amended by inserting after the word “operator”, in line 1 and in line 7, the following words:- or room reseller .

SECTION 90. Said chapter 64G is hereby further amended by striking out section 7B, as so appearing, and inserting in place thereof the following section:-

Section 7B. Every operator or room reseller who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable for those amounts to the commonwealth. The terms “operator” and “room reseller”, as used in this section, include an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 91. Section 12 of said chapter 64G, as so appearing, is hereby amended by inserting after the word “operator”, in line 5, the following words:- and each room reseller.

SECTION 92. It is the intent of provisions of this act that modify the tax treatment of corporate trusts to create general conformity with federal classification rules. It is also the intent of these provisions to ensure that any tax-free earnings and profits accumulated by an entity formerly treated as a corporate trust be subject to tax under chapter 62 or chapter 63 of the General Laws. To that end, the commissioner of revenue may adopt reasonable rules, by regulation or otherwise, to determine the method or methods by which previously untaxed amounts will be taxed to the entity, its successor, or its direct or indirect owners, partners, or beneficiaries. The commissioner may also determine reasonable transition rules for entities, including but not limited to corporate trusts and qualified subchapter S subsidiaries, and the successors, and direct or indirect owners, partners, or beneficiaries of

those entities, whose tax classification is altered by this act. These transition rules may include providing for nonrecognition of gain or loss in the event of a conversion of an entity's Massachusetts tax status resulting from this act, with corresponding adjustments to basis or other tax attributes if and as determined by the commissioner to be appropriate.

SECTION 93. Sections 1 to 15, inclusive, 17 to 24, inclusive, 27, 29 to 82, inclusive, and 92 shall be effective for tax years beginning on or after January 1, 2009.

SECTION 94. Sections 25 to 26, 28, and 83 to 91, inclusive, shall be effective for transfers of occupancy taking place on or after January 1, 2009.